

**SUBCHAPTER H : STANDARDS FOR THE MANAGEMENT OF
SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES
§§335.211-335.214, 335.221-335.229, 335.241, 335.251, 335.261
Effective July 16, 1997**

RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

§335.211. Applicability.

(a) The regulations of §§335.211-335.214 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal) apply to recyclable materials that are applied to or placed on the land:

(1) without mixing with any other substance(s);

(2) after mixing or combination with any other substance(s). These materials will be referred to throughout this subpart as "materials used in a manner that constitutes disposal."

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means and if such products meet the applicable treatment standards in 40 Code of Federal Regulations, Subpart D of Part 268 (or applicable prohibition levels in §268.32 or RCRA §3004(d), where no treatment standards have been established) for each recyclable material (i.e. hazardous waste) that they contain. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.

§335.212. Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal.

Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

§335.213. Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable

provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

§335.214. Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal.

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter O of this chapter (relating to Land Disposal Restrictions), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §335.211(b) of this title (relating to Applicability).

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

Adopted February 7, 1996

Effective March 1, 1996

HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§335.221. Applicability and Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685), and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, September 5, 1991, June 22, 1992, August 25, 1992, September 30, 1992, July 20, 1993, November 9, 1993, and September 19, 1994, issues of the *Federal Register* (see 56 FedReg 7239, 56 FedReg 32688, 56 FedReg 42504, 56 FedReg 43874, 57 FedReg 27880, 57 FedReg 28558, 57 FedReg 44999, 58 FedReg 38816, 58 FedReg 59598, and 59 FedReg 48042-48043):

- (1) §266.100 -- Applicability, except §266.100(b);
- (2) §266.102(a) -- Permit Standards for Burners - Applicability, excepting those portions of §266.102(a) containing references to §§264.56(d), 264.71-264.72, 264.75-264.77, 264.90, 264.101, and 264.142(a)(2);
- (3) §266.102(b) -- Permit Standards for Burners -Hazardous Waste Analysis;
- (4) §266.102(c) -- Permit Standards for Burners - Emission Standards;
- (5) §266.102(d) -- Permit Standards for Burners - Permits;
- (6) §266.102(e) -- Permit Standards for Burners - Operating Requirements;
- (7) §266.103 (a)(1)-(3) -- Interim Status Standards for Burners - Purpose, Scope, and Applicability -- General; Exemptions; and Prohibition on Burning Dioxin-Listed Wastes, respectively, except §§266.103(a)(1)(iii) and 266.103(a)(2);
- (8) §266.103(a)(4) -- Interim Status Standards for Burners -- Purpose, Scope, and Applicability -- Applicability of Part 265 Standards, excepting those portions of §266.103(a)(4) containing references to §§265.56(d), 265.71-265.72, 265.75-265.77, 265.142(a)(2); facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2) and §264.151(h)(2), as amended;
- (9) §266.103(a)(5)-(6) -- Interim Status Standards for Burners - Purpose, Scope, and Applicability: Special Requirements for Furnaces; and Restrictions on Burning Hazardous Waste That is Not a Fuel;
- (10) §266.103(b) -- Interim Status Standards for Burners - Certification of Precompliance, except §§266.103(b)(1) and 266.103(b)(6);

(11) §266.103(c) -- Interim Status Standards for Burners - Certification of Compliance, except §§266.103(c)(3)(i);

(12) §266.103(f) -- Interim Status Standards for Burners - Start-Up and Shut-Down;

(13) §266.103(g)(1) -(2) -- Interim Status Standards for Burners - Automatic Waste Feed Cutoff;

(14) §266.103(h)-(l) -- Interim Status Standards for Burners: Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure, respectively.

(15) §266.104 -- Standards to Control Organic Emissions, except §266.104(i);

(16) §266.105 -- Standards to Control Particulate Matter, except §266.105(c) and except as provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities);

(17) §266.106 -- Standards to Control Metals Emissions, except §266.106(i);

(18) §266.107 -- Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl₂) Emissions, except §266.107(h);

(19) §266.108 -- Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) may not be burned in an off-site device under the exemption provided by §266.108;

(20) §266.109 -- Low-Risk Waste Exemption;

(21) §266.110 -- Waiver of DRE Trial Burn for Boilers;

(22) §266.111 -- Standards for Direct Transfer; and

(23) §266.112 -- Regulation of Residues.

(b) The following hazardous wastes and facilities are not regulated under §§335.221-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces):

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the United States Environmental Protection Agency under 40 CFR Part 279 and Chapter 324 of this title (relating to Used Oil). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a CESQG or household generator;

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4 and §335.24(c)(4)-(7) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

(3) gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery; and

(4) coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

Adopted October 23, 1996

Effective November 20, 1996

§335.222. Management Prior To Burning.

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste).

(c) Storage facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

(1) Owners and operators of facilities that store or process hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of the following, except as provided by paragraph (2) of this subsection:

(A) Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General);

(B) Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions);

(C) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except §335.112(a)(12) -(19) of this title (relating to Standards);

(D) Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, except §335.152(11)-(16) of this title (relating to Standards);

(E) Chapter 305 of this title (relating to Consolidated Permits).

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions of 40 Code of Federal Regulations §266.108, only hazardous waste that they generate are exempt from regulation under the provisions listed above in paragraph (1) of this subsection applicable to storage units for those units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

Adopted January 30, 1996

Effective February 26, 1996

§335.223. Additional Permit Standards for Burners.

(a) In addition to the permit standards for burners under §335.221(a)(2)-(6) of this title (relating to Applicability and Standards), owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), as follows:

(1) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(2) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(4) §335.154 of this title (relating to Reporting Requirements for Owners and Operators);

(5) §335.155 of this title (relating to Additional Reports);

(6) §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(7) §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(8) §335.178 of this title (relating to Cost Estimate for Closure); and

(b) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit, pursuant to 40 Code of Federal Regulations (CFR) §266.102, §335.221 (a)(1)-(6) of this title (relating to Applicability and Standards), and subsections (a)-(1)-(8) of this section, will be regarded as compliance with 40 CFR §§266.104 - 266.107. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of 40 CFR §§266.104 - 266.107 may be "good cause" for justifying suspension or revocation of a permit under §305.66 of this title (relating to Permit Denial, Suspension, and Revocation) or may be "good cause" for amendment of the permit under §305.62(d)(2) of this title (relating to Amendment).

§335.224. Additional Interim Status Standards for Burner.

In addition to the interim status standards for burners under §335.221(a)(7)-(14) of this title (relating to Applicability and Standards), owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) as follows:

(1) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the owner or operator must comply with the applicable rules and regulations dealing with permit amendments or modifications under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations §270.42, or revisions of applications for hazardous waste permits and changes during interim status under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations §270.72;

(2) The requirements of this section and §335.221(a)(7) - (14) of this title do not apply to hazardous wastes and facilities exempt under §335.221(b) of this title, or exempt under 40 Code of Federal Regulations §266.108, as adopted under §335.221(a)(19) of this title.

(3) Owners and operators of existing boilers and industrial furnaces that burn hazardous waste are subject to the following provisions:

(A) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(B) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(C) §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(D) §335.114 of this title (relating to Reporting Requirements);

(E) §335.115 of this title (relating to Additional Reports);

(F) §335.127 of this title (relating to Cost Estimate for Closure);

(4) The owner or operator must provide complete and accurate information specified in 40 CFR §266.103(b)(2) to the executive director on or before August 21, 1992, and must establish limits for the operating parameters specified in 40 CFR §266.103(b)(3). Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in 40 CFR §266.103 (b)(3), the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, HCl and C1₂ are not likely to exceed the limits provided under 40 CFR §§266.105, 266.106, and 266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under 40 CFR §266.103(b)(3) until the owner or operator submits a revised certification of precompliance under 40 CFR §266.103(b)(8) or a certification of compliance under 40 CFR §266.103(c), or until a permit is issued;

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §305.103(b)(2)-(12) of this title (relating to Notice by Mail). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 Code of Federal Regulations (CFR) §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 CFR §266.103(b) and 30 TAC §335.224 (4)-(5)." An owner or operator who satisfied the public notice requirements under 40 CFR §266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

(A) name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;

(B) date that the certification of precompliance was submitted to the executive director;

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7)-(14) of this title, and 40 CFR §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and C1₂;

(D) types and quantities of hazardous waste burned including, but not limited to, source(s), whether solids or liquids, as well as an appropriate description(s) of the waste(s);

(E) type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

(F) types and quantities per year of other fuels and industrial furnace feedstocks fed to each unit;

(G) brief description of the basis for this certification of precompliance as specified in 40 CFR §266.103(b)(2);

(H) locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

(i) The administrative record kept by the local Texas Natural Resource Conservation Commission (TNRCC) regional office; and

(ii) The BIF correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the Regional Director of the United States Environmental Protection Agency (EPA), State and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and state site visit reports submitted to the owner or operator.

(I) notification of the establishment by the facility owner or operator of a facility mailing list whereby interested parties shall notify the facility owner or operator that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(J) location (mailing address) of the local Texas Water Commission (TWC) district office, where further information can be obtained on TWC regulation of hazardous waste burning;

(6) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 Code of Federal Regulations (CFR) §§266.103(a)(5)(i)(D), 266.104(b)-(e), 266.105, 266.106, and 266.107, under the procedures prescribed by this paragraph and paragraphs (7) and (8) of this section and 40 CFR §266.103(c), except under extensions of time provided by 40 CFR §266.103(c)(7). Based on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR §266.103(c)(1). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the certification of compliance or require additional information to be submitted within specified time frames.

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 Code of Federal Regulations (CFR) §266.103(b) and paragraphs (4)-(5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR, §266.103(c)(2). The owner and operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the

design, operation, and maintenance of both the tested unit and the similar unit. The director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of §266.103(c).

(8) If the owner or operator chooses to submit a revised certification of compliance (recertification of compliance) under 40 Code of Federal Regulations (CFR) §266.103(c)(8), or if the owner or operator is required to submit a recertification of compliance under paragraphs (9) or (11) of this section, then the owner or operator shall submit the recertification of compliance to the executive director under the procedures in 40 CFR §266.103(c)(8)(i)-(iv). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(9) The owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 Code of Federal Regulations (CFR) §266.103(c), within 150 days of rejection by the executive director under this paragraph and paragraphs (6), and (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames. Except for the activities necessary for the owner or operator to conduct the compliance testing in accordance with 40 CFR 266.103(c)(8)(i)-(iv), and except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon rejection by the executive director and until a subsequent recertification of compliance is approved under paragraph (8) of this section, the owner or operator shall not burn hazardous waste in the unit for which a certification of compliance or recertification of compliance was rejected;

(10) Except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon receipt of the third rejection by the executive director of a certification of compliance and/or recertification of compliance for the burning of hazardous waste in a boiler or industrial furnace, the owner or operator shall stop burning hazardous waste in the unit for which the certification and/or recertification were rejected, begin closure activities under 40 Code of Federal Regulations §266.103(l), and shall not resume the burning of hazardous waste except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits);

(11) Notwithstanding any requirement for a recertification under paragraph (9) of this section, the owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 Code of Federal Regulations §266.103(c) within three years from submitting the previous certification or recertification (excluding recertification(s) submitted under paragraph (9) of this section). If the owner or operator seeks to recertify compliance under new operating conditions, then the owner or operator must comply with the requirements of paragraph (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(12) The executive director may reject certifications or recertifications of compliance based on the failure of the owner or operator to meet the substantive requirements under 40 CFR 266.103 or §335.224 of this title, including, but not limited to, the following:

(A) Incorrect or inappropriate calculations or other mathematical techniques which lead to significant effects on operating condition limitations;

(B) Incorrect or inappropriate sampling, physical measurements, or analysis techniques which lead to significant effects on operating condition limitations;

(C) Equipment failure or malfunction during the compliance test which leads to inadequate results or incorrect results which significantly affects the limits on operating conditions;

(D) Inappropriate feed rates of waste, raw production materials, and/or fuels which leads to significant effects on operating condition limitations;

(E) Failure to operate the compliance test under steady-state conditions; or

(F) Other significant deficiencies which, in the opinion of the executive director will lead to endangerment to public health and welfare or insufficient protection of public property or the environment.

(13) The owner or operator may appeal to the commission any rejection of a certification or recertification by the executive director. Owners and operators who appeal to the commission any rejection of a certification or recertification by the executive director may continue operations under the rejected certification or recertification until the rejection is upheld by the commission.

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (4) - (6), (9), or (11) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 CFR §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits). For purposes of compliance with the closure provisions of paragraph (4) of this subsection and 40 CFR §265.112(d)(2) and §265.113 (as adopted in §335.112(a)(6)) the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(15) During the compliance test required by paragraph (7) of this section and 40 CFR §266.103(c)(3), and upon certification of compliance under 40 CFR §266.103(c), a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in 40 CFR §266.103(c)(1)(i) and (v)-(xiii) deviate from those established in the certification of compliance, and the boiler or industrial furnace must be operated in accordance with 40 CFR 266.103(g)(1)-(2).

§335.225. Additional Standards for Direct Transfer.

(a) The requirements of this section and 40 Code of Federal Regulations (CFR) §266.111, adopted by reference at §335.221(a)(22) of this title (relating to Applicability and Standards), apply to owners and operators of boilers and industrial furnaces subject to 40 CFR §§266.102 or 266.103, if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.

(b) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not adversely affect the capability of the boiler or industrial furnace to meet the standards provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§335.226. Standards for Burning Hazardous Waste in Commercial Combustion Facilities.

In addition to the applicable requirements under §§335.221-335.225 of this title (relating to Applicability and Standards; Management Prior to Burning; Additional Permit Standards for Burners; Additional Interim Status Standards for Burners; and Additional Standards for Direct Transfer, respectively), no person shall cause, suffer, allow, or permit the burning of hazardous waste in a combustion unit at any facility that accepts such hazardous waste from off-site sources which involves a commercial transaction or a change in ownership of the waste and for which the combustion unit is not regulated by the U.S. Environmental Protection Agency at 40 Code of Federal Regulations (CFR) Part 264 or 265, Subpart O, or by the Texas Water Commission at 31 Texas Administrative Code (TAC) §335.112(a)(14) or §335.152(a)(13), unless the following requirements are met. Where compliance with any of the applicable requirements under §§335.221-335.229 of this title (relating to Applicability and Standards; Management Prior to Burning; Additional Permit Standards for Burners; Additional Interim Status Standards for Burners; Additional Standards for Direct Transfer; Testing Requirements for Commercial Hazardous Waste Combustion Facilities; Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities; and Operating Requirements For Commercial Hazardous Waste Combustion Facilities, respectively) would result in lower emission rates of particulate matter, hydrogen chloride, chlorine gas, metals, carbon monoxide, hydrocarbons, or principal hazardous organic constituents than the emission rates that would result from compliance with another requirement under §§335.221-335.229, then the owner or operator shall comply with the applicable requirements which would result in lower emission rates.

(1) Particulate emissions shall not exceed 0.18 gram per dry standard cubic meter or 0.08 grain per dry standard cubic foot, to include particulate matter caught by impinger train, when corrected for 7% oxygen in the stack gas according to the formula specified in §111.121(1) of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);

(2) Hydrogen chloride (HCl) emissions greater than 1.8 kilograms (4 pounds) per hour shall be controlled with a minimum removal efficiency of 95%;

(3) Except as provided by 40 CFR §266.104(a)(3)-(5), destruction and removal efficiency (DRE) shall be at least 99.99% for each principal organic hazardous constituent (POHC) in each waste feed.

The POHCs shall be selected according to the method at 40 CFR Part 264.342 and shall be approved in advance by the executive director. DRE shall be determined using the following formula:

$$DRE = \left[1 - \frac{W_{out}}{W_{in}} \right] \times 100\%$$

in which W_{in} = the mass feed rate of an approved POHC in the waste stream feeding the combustion facility; and

W_{out} = the mass emission rate of the same POHC, expressed in the same units as the mass feed rate used in W_{in} , present in exhaust emissions of the combustion device prior to release to the atmosphere;

(4) The facility shall perform a trial burn according to the requirements listed at 40 CFR Part 270.62 to determine compliance with paragraphs (1)-(3) of this section. The operating conditions and waste feed composition during a trial burn demonstrating compliance with the requirements of subsections (a)-(c) shall be maintained as limits for subsequent operation of the facility. Substitution of new hazardous waste constituents and increases in the concentration of any hazardous waste constituent compared to the conditions existing during the trial burn will require retesting unless such change or substitution has received written approval from the executive director. The operating limits shall be monitored continuously and shall include the following:

- (A) Maximum carbon monoxide level in the exhaust gas of the combustion device,
- (B) Minimum oxygen level in the exhaust gas of the combustion device,
- (C) Maximum waste feed rate to the combustion device,
- (D) Minimum combustion temperature,
- (E) An appropriate indicator of combustion gas velocity,
- (F) Maximum total hydrocarbons in the exhaust gas of the combustion device, and

(G) Any other operating limit determined necessary by the executive director to ensure that the requirements of paragraphs (1)-(3) of this section are met.

(5) The facility shall not burn any chlorinated hazardous waste or hazardous waste containing any of the following metals unless an enforceable emission limit has been established which is designed to protect public health for each metal and for toxic products of incomplete combustion.

Metals

Arsenic	Chromium
Antimony	Lead
Barium	Mercury
Beryllium	Silver
Cadmium	Thallium

(6) The facility shall maintain an automatic waste feed cutoff system which shall activate if the facility is not operating within the limits determined in accordance with paragraph (4) of this section and shall remain activated until the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(7) During start-up or shutdown of the facility, hazardous waste fuels must not be fed into the combustion zone unless the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(8) Fugitive emissions from the combustion zone shall be controlled by maintaining the combustion zone pressure lower than atmospheric pressure or by keeping the combustion zone totally sealed to prevent fugitive emissions.

(9) Compliance with the requirements of paragraphs (1)-(4) and (6)-(8) of this section shall be accomplished prior to the burning of any hazardous waste, except for such burning which is necessary to conduct the required trial burn. Compliance with paragraph (5) shall be as soon as practicable but no later than July 31, 1992. This paragraph applies to facilities burning hazardous waste under state or federal interim status prior to the effective date of this section. Facilities not burning hazardous waste under interim status which are permitted after that date will be subject to compliance dates specified by permit.

§335.227. Testing Requirements for Commercial Hazardous Waste Combustion Facilities.

Compliance with §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities) shall be demonstrated by application of the test methods included in §111.125 of this title (relating to Testing Requirements). Test reports prepared to demonstrate compliance with §335.226 shall clearly document the operating conditions and waste feed composition existing during the test.

§335.228. Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities.

(a) The owner or operator of a commercial combustion facility subject to the requirements of §§335.226 or 111.125 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities, and Testing Requirements, respectively), shall maintain written records of all monitoring and testing results, hours of operation, and quantity of waste burned. Such records shall be

retained for a period of not less than three years. Such records shall be made available upon request by authorized representatives of the commission, the Texas Air Control Board, the U.S. Environmental Protection Agency (EPA), or local air pollution control agencies.

(b) The owner or operator of a commercial combustion facility subject to the requirements of §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities) shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the waste feed rate, combustion gas velocity, opacity, oxygen content, carbon monoxide (CO) content, total hydrocarbon (THC) content, and temperature of the exhaust gas of the combustion device. CO and THC shall be corrected to 7% oxygen, reported on a dry basis, and measured in the same location. The oxygen, THC, CO, combustion gas velocity, and opacity devices must be certified for use following procedures outlined in 40 Code of Federal Regulations Part 60. Such certification must be approved by the executive director or by his designated representative. Compliance determinations may be made based on results of monitoring with a certified monitor.

§335.229. Operating Requirements For Commercial Hazardous Waste Combustion Facilities.

The owner or operator of commercial combustion facilities subject to the requirements of §§335.226; 111.125; or 335.228 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities; Testing Requirements; and Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities), respectively, shall meet the requirements of §111.129 of this title (relating to Operating Requirements).

RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

§335.241. Applicability and Requirements.

(a) The regulations of this section apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

(1) Section 335.4 of this title (relating to General Prohibitions);

(2) Section 335.6 of this title (relating to Notification Requirements); and

(3) Sections 335.9-335.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), for generators, transporters, or persons who store, as applicable.

(c) Persons who store recyclable materials that are regulated under this section shall keep the following records to document that they are not accumulating these materials speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) records showing the volume of these materials stored at the beginning of the calendar year;

(2) the amount of these materials generated or received during the calendar year; and

(3) the amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), and Chapter 273 of this title (relating to Procedures After Final Decision).

SPENT LEAD-ACID BATTERIES BEING RECLAIMED

§335.251. Applicability and Requirements.

(a) The regulations of this section apply to persons who reclaim spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them, are not subject to regulation under this chapter, Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), or Chapter 273 of this title (relating to Procedures After Final Decision). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

(1) All applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and 40 Code of Federal Regulations §265.13; and

(2) All applicable provisions in Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), and Chapter 273 of this title (relating to Procedures After Final Decision).

UNIVERSAL WASTE RULE

§335.261. Universal Waste Rule.

(a) Except as provided in subsection (b) of this section, Title 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as adopted and effective on May 11, 1995, at 60 FedReg 25492.

(b) Title 40 CFR Part 273 is adopted subject to the following changes:

(1) The term "regional administrator" is changed to "executive director" or "commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5.

(2) The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Natural Resource Conservation Commission," "the agency," or "the commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §273.32(a)(3) or §273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

(3) The term "treatment" is changed to "processing."

(4) In 40 CFR §273.2(a) and (b), references to "40 CFR part 266, subpart G," are changed to "§335.251 of this title (relating to Applicability and Requirements)."

(5) In 40 CFR §273.2(b)(2), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(6) In 40 CFR §273.3(b)(1), the reference to "40 CFR 262.70" is changed to "§335.77 of this title (relating to Farmers)." Also, the phrase "(40 CFR 262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR 261.7(b)(3))" is deleted.

(7) In 40 CFR §273.3(b)(2), the reference to "40 CFR parts 260 through 272" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(8) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(9) In 40 CFR §273.3(d)(1)(i) and (ii), references to "40 CFR 261.2" are changed to "§335.1 of this title (relating to Definitions)."

(10) In 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.5(a)(1), the reference to "40 CFR 261.4(b)(1)" is changed to "§335.1 of this title (relating to Definitions)."

(12) In 40 CFR §273.5(a)(2), the reference to "40 CFR 261.5" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)."

(13) In 40 CFR §273.6, the definitions of "Generator" and "On-site" are replaced with the corresponding definitions found in §335.1 of this title (relating to Definitions). Also, the definition of "Small Quantity Handler of Universal Waste" is changed to read "Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates less than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time."

(14) In 40 CFR §273.13(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(15) In 40 CFR §273.13(c)(2)(iii) and (iv), references to "40 CFR 262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(16) In 40 CFR §273.13(c)(3)(ii), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(17) In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(18) In 40 CFR §273.20(a), the reference to "40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(19) In 40 CFR §273.20(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(20) In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(21) In 40 CFR §273.33(c)(2)(iii) and (iv), the references to "40 CFR 262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(22) In 40 CFR §273.33(c)(3)(ii), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(23) In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(24) In 40 CFR §273.40(a), the reference to "40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(25) In 40 CFR §273.40(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(26) In 40 CFR §273.52(a), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(27) In 40 CFR §273.52(b), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(28) In 40 CFR §273.54(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(29) In 40 CFR §273.60(a), the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to "Title 30 Texas Administrative Code (relating to Environmental Quality)."

(30) In 40 CFR §273.60(b), the reference to "40 CFR 261.6(c)(2)" is changed to "§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

(31) In 40 CFR §273.80(a), the reference to "40 CFR 260.20 and 260.23" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules) and §335.261(c) of this title (relating to Universal Waste Rule)."

(32) In 40 CFR §273.80(b), the reference to "40 CFR 260.20(b)" is changed to "§20.15 of this title."

(33) In 40 CFR §273.81(a), the reference to "40 CFR 260.10" is changed to "§335.1 of this title (relating to Definitions)."

(c) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and subpart G of 40 CFR part 273 as adopted by reference in this section.

(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

(2) The commission will grant or deny a petition using the factors listed in 40 CFR §273.81. The decision will be based on the commission's determinations that regulation under the universal waste rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(3) The commission may request additional information needed to evaluate the merits of the petition.

(d) Any waste not qualifying for management under 40 CFR part 273, as adopted by reference in this section, must be managed in accordance with applicable state regulations.

Adopted June 25, 1997

Effective July 16, 1997